

HOUSE BILL No. 1835

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.5-4-2; IC 6-3.5-5-2; IC 6-6-12; IC 8-14-2-4.

Synopsis: County motor fuel tax. Provides that a county motor fuel tax may be imposed by counties that do not have a county motor vehicle excise surtax and county wheel tax in effect. Allows a county that adopts the tax to collect \$0.01 or \$0.02 per gallon of gasoline or special fuel. Requires that a county that imposes the tax must follow the procedures for adoption under the county option income tax. Prohibits the adoption of the county motor vehicle excise surtax and county wheel tax if the county motor fuel tax is in effect. Establishes a state general fund account and county and city and town motor fuel tax funds for a county in which the county motor fuel tax is imposed. Requires revenue to be collected by the state and distributed to the (Continued next page)

Effective: July 1, 1999.

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Digest Continued

county and the cities and towns in the county. Provides that a portion of the revenue is distributed in the same manner as funds from the local road and street account. Allows the issuance of bonds payable from county and city and town motor fuel tax funds.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1835

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-3.5-4-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The county
3 council of any county may, subject to the limitation imposed by
4 subsection (c), adopt an ordinance to impose an annual license excise
5 surtax at the same rate or amount on each motor vehicle listed in
6 subsection (b) that is registered in the county. The county council may
7 impose the surtax either:
8 (1) at a rate of not less than two percent (2%) nor more than ten
9 percent (10%); or
10 (2) at a specific amount of at least seven dollars and fifty cents
11 (\$7.50) and not more than twenty-five dollars (\$25).
12 However, the surtax on a vehicle may not be less than seven dollars and
13 fifty cents (\$7.50). The county council shall state the surtax rate or
14 amount in the ordinance which imposes the tax.
15 (b) The license excise surtax applies to the following vehicles:

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(1) Passenger vehicles.

(2) Motorcycles.

(3) Trucks with a declared gross weight that does not exceed eleven thousand (11,000) pounds.

(c) The county council may not adopt an ordinance to impose the surtax unless it concurrently adopts an ordinance under IC 6-3.5-5 to impose the wheel tax **and the county motor fuel tax under IC 6-6-12 is not in effect on July 1 of the year of adoption.**

(d) Notwithstanding any other provision of this chapter or IC 6-3.5-5, ordinances adopted by a county council before June 1, 1983, to impose or change the annual license excise surtax and the annual wheel tax in the county remain in effect until the ordinances are amended or repealed under this chapter or IC 6-3.5-5.

SECTION 2. IC 6-3.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The county council of any county may, subject to the limitation imposed by subsection (b), adopt an ordinance to impose an annual wheel tax on each vehicle which:

(1) is included in one (1) of the classes of vehicles listed in section 3 of this chapter;

(2) is not exempt from the wheel tax under section 4 of this chapter; and

(3) is registered in the county.

(b) The county council of a county may not adopt an ordinance to impose the wheel tax unless it concurrently adopts an ordinance under IC 6-3.5-4 to impose the annual license excise surtax **and the county motor fuel tax under IC 6-6-12 is not in effect on July 1 of the year of adoption.**

(c) The county council may impose the wheel tax at a different rate for each of the classes of vehicles listed in section 3 of this chapter. In addition, the county council may establish different rates within the classes of buses, semitrailers, trailers, tractors, and trucks based on weight classifications of those vehicles that are established by the bureau of motor vehicles for use throughout Indiana. However, the wheel tax rate for a particular class or weight classification of vehicles may not be less than five dollars (\$5) and may not exceed forty dollars (\$40). The county council shall state the initial wheel tax rates in the ordinance that imposes the tax.

SECTION 3. IC 6-6-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 12. County Motor Fuel Tax



1 Sec. 1. As used in this chapter, "department" means the
2 department of state revenue.

3 Sec. 2. As used in this chapter, "fiscal body" has the meaning set
4 forth in IC 36-1-2-6.

5 Sec. 3. Except as otherwise provided in this chapter, the
6 definitions in IC 6-6-1.1-103 and IC 6-6-2.5 apply throughout this
7 chapter.

8 Sec. 4. (a) A county motor fuel tax council is established on
9 January 1 for each county in Indiana that will not have the county
10 excise surtax and county wheel tax in effect for registrations in that
11 year. The membership of each county motor tax council consists of
12 the fiscal body of the county and the fiscal body of each city or
13 town that is located either partially or entirely within the county.

14 (b) In the case of a city or town that is located within more than
15 one (1) county, the county auditor of each county shall base the
16 allocations required by subsection (c) on the population of that
17 part of the city or town that is located within the county where the
18 allocations are being made.

19 (c) Each county motor fuel tax council has a total of one
20 hundred (100) votes. Each member of the county motor fuel tax
21 council is allocated a percentage of the one hundred (100) votes
22 that may be cast. The percentage that a city or town is allocated for
23 a year equals the same percentage that the population of the city or
24 town bears to the population of the county. The percentage that the
25 county is allocated for a year equals the same percentage that the
26 population of all areas in the county not located in a city or town
27 bears to the population of the county. Before January 1 of each
28 year, the county auditor shall certify to each member of the county
29 motor fuel tax council the number of votes, rounded to the nearest
30 one-hundredth (0.01), that each member of the county motor fuel
31 tax council has for that year.

32 Sec. 5. (a) The county motor fuel tax may be imposed by the
33 county motor fuel tax council on the sale within the county of:

- 34 (1) gasoline subject to the gasoline tax under IC 6-6-1.1; and
- 35 (2) special fuel that is subject to the special fuel tax under
- 36 IC 6-6-2.5, including the placing of special fuel into the
- 37 taxable storage facility of an authorized unlicensed user or an
- 38 authorized unlicensed special fuel dealer.

39 (b) The county motor fuel tax may be imposed at a rate of:

- 40 (1) one cent (\$0.01); or
- 41 (2) two cents (\$0.02);

42 for each gallon of gasoline and special fuel.



(c) Distributors, dealers, users, and all persons selling gasoline or special fuel must state the rate of the county motor fuel tax separately on every statement showing the price of gasoline or special fuel.

Sec. 6. (a) To impose the county motor fuel tax, a county motor fuel tax council must:

(1) use the procedures used in IC 6-3.5-6 for imposing the county option income tax; and

(2) after January 1 but before April 1 of the year the tax will be effective, pass a recommendation regarding the imposition of the county motor fuel tax in a form that substantially states the following:

"We recommend that the county motor fuel tax be imposed at a rate of ___ cents (\$0.____) for each gallon of gasoline and special fuel sold within January 26 county. Ways and Means. This tax takes effect July 1 of this year."

(b) A recommendation by the county motor fuel tax council must be adopted by ordinance by the county fiscal body before the tax may take effect. If a recommendation made by a county motor fuel tax council is not adopted by ordinance by the county fiscal body before July 1, that particular recommendation for the ordinance expires.

(c) The county auditor shall record all votes taken by the fiscal body regarding ordinances under this chapter and shall immediately certify the results to the department.

(d) An ordinance under this chapter adopted by the county fiscal body takes effect July 1 of the year the ordinance is adopted.

Sec. 7. Except as permitted by this chapter, a city, town, county, township, or municipal corporation may not impose:

(1) an excise tax on or measured by the sale, receipt, distribution, or use of gasoline; or

(2) an excise, a privilege, or an occupational tax on the business of manufacturing, selling, or distributing gasoline.

Sec. 8. (a) The county motor fuel tax council may recommend a decrease or increase in the county motor fuel tax rate. To decrease or increase the county motor fuel tax rate the county motor fuel tax council must, after January 1 but before April 1, adopt a resolution that substantially states the following:

"We recommend that the county motor fuel tax rate be decreased (increased) from a rate of ___ cents (\$0.____) for each gallon of gasoline and special fuel sold to a rate of ___cents (\$0.____) for each gallon of gasoline and special



1 fuel sold within _____ county. This decrease (increase)
2 takes effect July 1 of this year."

3 (b) A recommendation by the county motor fuel tax council
4 must be adopted by ordinance by the county fiscal body before the
5 decrease or increase may take effect. If a recommendation made by
6 a county motor fuel tax council is not adopted by ordinance by the
7 county fiscal body before July 1, that particular recommendation
8 for the ordinance expires.

9 (c) The county auditor shall record all votes taken by the fiscal
10 body regarding ordinances under this chapter and shall
11 immediately certify the results to the department.

12 (d) An ordinance under this chapter adopted by the county
13 fiscal body takes effect July 1 of the year the ordinance is adopted.

14 Sec. 9. (a) The county motor fuel tax council may recommend
15 rescinding the county motor fuel tax rate. To rescind the county
16 motor fuel tax rate the county motor fuel tax council must, after
17 January 1 but before April 1, adopt a resolution that substantially
18 states the following:

19 "We recommend the county motor fuel tax rate be
20 rescinded within _____ county effective July 1 of this
21 year."

22 (b) A recommendation by the county motor fuel tax council
23 must be adopted by ordinance by the county fiscal body before the
24 rescission may take effect. If a recommendation made by a county
25 motor fuel tax council is not adopted by ordinance by the county
26 fiscal body before July 1, that particular recommendation for the
27 ordinance expires.

28 (c) The auditor of a county shall record all votes taken by the
29 fiscal body regarding ordinances under this chapter and shall
30 immediately certify the results to the department.

31 (d) An ordinance under this chapter adopted by the county
32 fiscal body takes effect July 1 of the year the ordinance is adopted.

33 Sec. 10. (a) A person that purchases gasoline shall initially pay
34 the tax on the billed gallonage of all gasoline the person receives in
35 the county. The person shall then add the per gallon amount of tax
36 to the selling price of each gallon of gasoline sold in this state and
37 collected from the purchaser so that the ultimate consumer bears
38 the burden of the tax.

39 (b) A person required to pay special fuel taxes under IC 6-6-1.1
40 shall remit the tax due under this chapter for taxable special fuel
41 that is purchased in a county that has imposed the county motor
42 fuel tax.



1 **Sec. 11.** A person desiring to receive gasoline within a county
 2 with a county motor vehicle fuel tax without paying gasoline tax to
 3 his supplier must hold an uncanceled license under IC 6-6-1.1
 4 issued by the administrator to do business as a distributor. For
 5 purposes of this chapter, "supplier" means a distributor or person
 6 who sells gasoline.

7 **Sec. 12.** To determine a person's tax liability under this chapter,
 8 the person shall file a sworn report with the administrator by the
 9 twentieth day of each calendar month that includes an itemized
 10 statement of the number of invoiced gallons of gasoline or special
 11 fuel received by the person in each county with a county motor
 12 vehicle fuel tax.

13 **Sec. 13.** At the time of filing each monthly report, each person
 14 shall pay to the department the full amount of tax due under this
 15 chapter for the preceding calendar month. The payment must be
 16 included with the payment of gasoline taxes under IC 6-6-1.1 or
 17 special fuel taxes under IC 6-6-2.5.

18 **Sec. 14.** Every person other than a licensed distributor who
 19 purchases or otherwise acquires taxable gasoline and unknowingly
 20 fails to pay the gasoline tax to either a licensed Indiana distributor
 21 or Indiana dealer shall make the same reports and payment
 22 required of distributors under this chapter. However, the person
 23 is not entitled to any deductions or credits.

24 **Sec. 15.** Until a person pays to the department the county motor
 25 fuel tax on gasoline or special fuel the person receives, the tax
 26 money collected is state money. A person who collects the tax shall
 27 hold it in trust for the state and for payment to the department as
 28 provided in this chapter. In the case of a corporate or partnership
 29 distributor, every officer, employee, or member of the employer
 30 who in that capacity is under a duty to collect the tax is personally
 31 liable for the tax, penalty, and interest.

32 **Sec. 16.** (a) Notwithstanding any other provision, a special fuel
 33 user may pay the tax imposed by this chapter to the user's supplier
 34 if:

- 35 (1) the supplier is a licensed special fuel dealer; and
- 36 (2) the special fuel user, supplier, and administrator enter into
- 37 a written agreement authorizing payment of the tax in that
- 38 manner.

39 (b) A special fuel dealer may pay the tax imposed by this
 40 chapter to the dealer's supplier if the:

- 41 (1) supplier is a licensed special fuel dealer;
- 42 (2) special fuel dealer has not more than two (2) taxable



special fuel pumps at any business location; and
 (3) special fuel dealer, supplier, and administrator enter into
 a written agreement authorizing payment of the tax in that
 manner.

(c) Upon agreement under this section, the administrator shall
 notify concerned parties in writing of the authorization granted.

(d) Authorizations under this section are effective upon the date
 determined by the administrator.

(e) All taxes due and payable before the effective date of an
 agreement must be paid in full before the effective date of the
 agreement under this section.

(f) A party to an agreement under this section may terminate
 the agreement with thirty (30) days written notice to the other
 parties.

(g) A separate agreement is necessary for each supplier to whom
 the tax will be paid under this section.

(h) A person that pays taxes under this section does not have to
 file the monthly reports under section 12 of this chapter.

Sec. 17. (a) There is established in the state general fund a
 county motor fuel tax account for each county that adopts a county
 motor fuel tax.

(b) Revenue generated by the county motor fuel tax from each
 county that adopts the tax must be placed into that county's motor
 fuel tax account in the state general fund.

(c) Income earned on each county motor fuel tax account
 becomes a part of that account.

(d) The money in the county motor fuel tax account does not
 revert to the state general fund.

Sec. 18. (a) Revenue derived from the imposition of the county
 motor fuel tax shall, in the manner prescribed by this section, be
 distributed to the county that imposed the tax. The amount that is
 to be distributed to a county during an ensuing calendar year
 equals the amount of county motor fuel tax revenue that the
 department, after reviewing the recommendation of the budget
 agency, estimates will be received from that county during the
 twelve (12) month period beginning July 1 of the immediately
 preceding calendar year and ending June 30 of the ensuing
 calendar year.

(b) Before June 16 of each calendar year, the department, after
 reviewing the recommendation of the budget agency, shall estimate
 and certify to the county auditor of each adopting county the
 amount of county motor fuel tax revenue that will be collected



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from that county during the twelve (12) month period beginning July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year. The amount certified is the county's "certified distribution" for the immediately succeeding calendar year. The amount certified may be adjusted under subsection (c) or (d).

(c) The department may certify to an adopting county an amount that is greater than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the budget agency, determines that there will be a greater amount of revenue available for distribution from the county's account established under section 17 of this chapter.

(d) The department may certify an amount less than the estimated twelve (12) month revenue collection if the department, after reviewing the recommendation of the budget agency, determines that a part of those collections needs to be distributed during the current calendar year so that the county will receive its full certified distribution for the current calendar year.

(e) One-twelfth (1/12) of each adopting county's certified distribution for a calendar year shall be distributed from its account established under section 17 of this chapter to the appropriate county treasurer on the first day of each month of that calendar year.

(f) Upon receipt, each monthly payment of a county's certified distribution shall be allocated among, distributed to, and used by the county, cities in the county, and towns in the county as provided in section 19 of this chapter.

(g) All distributions from an account established under section 17 of this chapter shall be made by warrants issued by the auditor of state to the treasurer of state ordering the appropriate payments.

Sec. 19. (a) The certified distributions received by the county must be distributed by the county auditor as follows:

(1) Seventy-five percent (75%) of the certified distribution must be distributed as follows:

(A) Thirty-two percent (32%) of the amount is to be divided among the cities and towns in the county according to the population of the city or town in relation to the county population.

(B) Sixty-eight percent (68%) of the amount is for the county.

(2) Twenty-five percent (25%) of the certified distribution



must be distributed in the same manner as money from the local road and street account is allocated to the county under IC 8-14-2.

(b) The department of transportation must provide each county with the fractional amount of the distribution the county is entitled to receive under subsection (a)(2).

(c) Distributions received by a county, city, or town under this section must be deposited into the motor fuel tax fund established in the particular unit.

Sec. 20. Revenues from the motor fuel tax fund may be used as follows:

(1) The money distributed to cities and towns must be annually budgeted as required by law and may only be used:

(A) for the maintenance and improvement of:

(i) streets;

(ii) roads; and

(iii) alleys; or

(B) to pay bonds issued under section 21 of this chapter.

(2) The money distributed to counties must be annually budgeted as required by law and may only be used:

(A) for the maintenance and improvement of:

(i) county highways; or

(ii) bridges on county highways; or

(B) to pay bonds issued under section 21 of this chapter.

Sec. 21. (a) The fiscal body of a county, city, or town may issue bonds payable from the unit's motor fuel tax fund. The bonds must be for the purposes set forth in section 20 of this chapter.

(b) If there are bonds outstanding that have been issued under this section, the county motor fuel tax council and the county fiscal body may not reduce the county motor fuel tax rate below a rate that would produce one and twenty-five hundredths (1.25) times the total of the highest annual debt service on the bonds to their final maturity, based on an average of the tax collections for the immediately preceding three (3) years. If the tax has not been imposed for the preceding three (3) years, the county motor fuel tax council and the county fiscal body may not reduce the rate below a rate that would produce one and twenty-five hundredths (1.25) times the total of the highest annual debt service, based upon a study by a qualified public accountant or financial adviser.

(c) IC 6-1.1-20 does not apply to the issuance of bonds under this section.

(d) Bonds issued under this section may be sold at a public sale



1 in accordance with IC 5-1-11 or may be sold at a negotiated sale.

2 (e) After a sale of bonds under this section, the county auditor
3 shall prepare a debt service schedule for the bonds.

4 (f) The general assembly covenants that it will not repeal or
5 amend this chapter in a manner that would adversely affect owners
6 of outstanding bonds issued, or payment of any lease rentals due,
7 under this section.

8 Sec. 22. Except as otherwise provided in this chapter, the
9 provisions of IC 6-6-1.1 and IC 6-6-2.5 concerning:

- 10 (1) definitions;
11 (2) filing of reports or returns;
12 (3) shrinkage allowances and remittances;
13 (4) penalties and interest; and
14 (5) refunds;

15 apply to the imposition, collection, and administration of the tax
16 imposed by this chapter.

17 Sec. 23. Before February 1 of each year, the department shall
18 submit a report to each county that has adopted a tax under this
19 chapter indicating the amount credited to the county's motor fuel
20 tax account during the preceding year.

21 SECTION 4. IC 8-14-2-4 IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The auditor of state shall
23 establish a special account to be called the "local road and street
24 account" and credit this account monthly with forty-five percent (45%)
25 of the money deposited in the highway road and street fund.

26 (b) The auditor shall distribute:

- 27 (1) to units of local government in each county money from this
28 the local road and street account each month; and
29 (2) to units of local government in a county that has adopted
30 a county motor fuel tax under IC 6-6-12 the portion of the
31 certified distribution under IC 6-6-12-19(a)(2) from the
32 county motor fuel tax account in the state general fund for
33 that particular county.

34 (c) The auditor of state shall allocate to each the appropriate
35 county the money in this account subsection (b) on the basis of the
36 ratio of each county's passenger car registrations to the total passenger
37 car registrations of the state. The auditor shall further determine the
38 suballocation between the county and the cities within the county as
39 follows:

- 40 (1) In counties having a population of more than fifty thousand
41 (50,000), sixty percent (60%) of the money shall be distributed on
42 the basis of the population of the city or town as a percentage of

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1 the total population of the county and forty percent (40%)
2 distributed on the basis of the ratio of city and town street mileage
3 to county road mileage.

4 (2) In counties having a population of fifty thousand (50,000) or
5 less, twenty percent (20%) of the money shall be distributed on
6 the basis of the population of the city or town as a percentage of
7 the total population of the county and eighty percent (80%)
8 distributed on the basis of the ratio of city and town street mileage
9 to county road mileage.

10 (3) For the purposes of allocating funds as provided in this
11 section, towns which become incorporated as a town between the
12 effective dates of decennial censuses shall be eligible for
13 allocations upon the effectiveness of a corrected population count
14 for the town under IC 1-1-3.5.

15 (4) Money allocated under the provisions of this section to
16 counties containing a consolidated city shall be credited or
17 allocated to the department of transportation of the consolidated
18 city.

19 (d) Each month the auditor of state shall inform the department of
20 the amounts allocated to each unit of local government from the local
21 road and street account.

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